## EXHIBIT I, APPENDIX

**Opinion of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, at San Antonio**

(Tr. E-1 through E-4)

Floyd Huggins, Appellant,

No. 14573, v.

Lang Kinsey, Appellee.

Appeal from Kimble County.

Writ of error from a default judgment rendered in the District Court of Kimble County, Texas, against appellant, a resident of the State of Kansas, in an automobile accident personal injury case. Appellee filed suit in the District Court of Kimble County for injuries alleged to have been sustained by him as a result of an automobile collision in Kimble County involving a car being driven by appellant. Appellee's petition alleged that appellant was a resident of the State of Kansas. A "Non-Resident Notice" under the provisions of Rule 108, T.R.C.P., was personally served on appellant in Johnson County, Kansas, but no other citation was ever served upon him. Appellant filed no answer and made no appearance of any kind in said suit. Default judgment was thereafter rendered in said case against appellant in the amount of $15,000.00.

Appellant contends that no valid process in said cause was ever issued or served upon him; that the court did not acquire jurisdiction over the person of appellant by reason of such "Non-Resident Notice"; and that the trial court erred in rendering judgment against appellant because the

court had no jurisdiction over the person of appellant and no power to render judgment against him. Appellant contends that the landmark case of Pennoyer v. Neff, 95 U.S. 565, by the Supreme Court of the United States is controlling in this case. Appellee maintains that Pennoyer v. Neff has been so modified and "whittled down" by subsequent decisions of the Supreme Court, including Hess v. Pawleski, 274 U.S. 352; Millikin v. Meyer, 311 U.S. 457; International Shoe Co. v. State of Washington, 326 U.S. 310; and McGee v. International Life Ins. Co., 355 U.S. 220, that it does not apply in the case before us. These cases involve the construction of certain state statutes providing for methods of service upon non-residents, chiefly of the nature of our Non-Resident Motorist Act, Art. 2039a, Vernon's Ann.Civ.St., and our so-called "long arm" statute, Art. 2031b, Vernon's Ann.Civ.St., although Millikin v. Meyer was a suit in a Wyoming court between two citizens of Wyoming, but where notice of the suit was served upon the defendant in Colorado. The Supreme Court in that decision held that the authority of a state over one of its citizens is not terminated by the mere fact of his absence from the state, and that domicile in a state is alone sufficient to bring an absent defendant within reach of a state's jurisdiction for purpose of a personal judgment by means of appropriate substituted service. Pennoyer v. Neff has been followed by our Texas Supreme Court in York v. State, 73 Tex. 651, 11 S.W. 869; August Kern Barber Supply Co. v. Freeze, 96 Tex. 513, 74 S.W. 303; and Horst v. Lightfoot, 103 Tex. 643, 132 S.W. 761. Appellee cites no Texas cases overruling these decisions.

Appellee concedes that he could have obtained jurisdiction over appellant by service of process under the provisions of our Non-Resident Motorist Statute, Art. 2039a, supra, but instead he chose to utilize the provisions of one

of our Rules of Civil Procedure, No. 108, to obtain service on the non-resident. The case of Bonzani, Inc. v. Lee, 337 S.W. 2d 437 (1960, no writ), was a personal injury suit arising out of an automobile collision involving service of process on a non-resident under Rule 108, T.R.C.P. The Court held that the part of Rule 108 which provides for service on a defendant who is a non-resident of this State will not lend validity to plaintiff's personal judgment against defendant, and that service in the State of Oklahoma on a non-resident defendant would not support a personal judgment. The case of Roumel v. Drill Well Co., 270 F. 2d 550, involves an action brought in a Texas court against a non-resident of the State of Texas, in which citation was issued and served on the non-resident under the authority of Rule 108, T.R.C.P. The United States Court of Appeals, Fifth Circuit, stated that it is clear that Texas had not attempted by Rule 108 of its Rules of Civil Procedure to vest jurisdiction in its courts to render personal judgments against non-residents, and held that service under Rule 108 gave the court no jurisdiction to render personal judgment against the defendant. In a recent Texas case involving service on a non-resident under Rule 108, the Court held that where appellant's cause of action was in personam, citation under Rule 108 did not bring such non-resident before the court so that a personal judgment could be rendered against him, and cited Pennoyer v. Neff as its authority therefor. Henry v. Reno, 401 S.W. 2d 118, writ ref'd n.r.e.

Appellant, having now appeared to attack the judgment,[1] is presumed to have entered his appearance to the term of the court at which the mandate shall be filed. Rule 123, T.R.C.P. The default judgment against appellant

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1. Appellant did not make any special appearance as is authorized by Rule 120a, Texas Rules of Civil Procedure.

is reversed and set aside, and the cause remanded to the trial court for a new trial.

Fred V. Klingeman
Associate Justice

Opinion delivered and filed March 22, 1967.

STATE OF TEXAS (
)
COUNTY OF BEXAR (

I, Robert L. Cook, Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas do hereby certify that the foregoing is a true and correct copy of The Opinion filed March 22, 1967, in Cause No. 14573, wherein Floyd Huggins, is Appellant, and Lang Kinsey, is Appellee, as the same appears of record in my office.

WITNESS Robert L. Cook, Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas.

GIVEN under my hand and seal of said Court, at office in the City of San Antonio, Texas, this 18th day of December, 1967.

(Seal) /s/ Robert L. Cook
Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas

STATE OF TEXAS (
)
COUNTY OF BEXAR (

I, Charles W. Barrow, Chief Justice of the Court of Civil Appeals for the Fourth Supreme Judicial District of

Texas, Sitting in San Antonio, Texas, do hereby certify that Robert L. Cook, whose name is subscribed to the foregoing certificate of attestation, now is and was, at the time of signing and sealing the same, Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas, and keeper of the Records and seal thereof, duly appointed and qualified to office; that full faith and credit are and of right ought to be given to all his official acts as such in all Courts of Record and elsewhere; and that his said attestation is in due form of law, and by the proper officer.

GIVEN under my hand and seal this 18th day of December, 1967.

/s/ Charles W. Barrow
Chief Justice of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas Sitting at San Antonio, Texas

STATE OF TEXAS (
)
COUNTY OF BEXAR (

I, Robert L. Cook, Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas, do hereby certify that Charles W. Barrow, whose genuine signature is appended to the foregoing certificate, was, at the time of signing the same, Chief Justice of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, duly elected and qualified, that full faith and credit are and of right ought to be given to all his official acts as such, in all Courts of Record and elsewhere.

WITNESS, Robert L. Cook, Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas.

GIVEN under my hand and seal of said Court, at office in the City of San Antonio, this 18th day of December, 1967.

(Seal) /s/ Robert L. Cook
Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas

## EXHIBIT II, APPENDIX

**Judgments of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, at San Antonio**

(On Merits, and on Motion for Rehearing)

(Tr. F-1, F-2)

JUDGMENT OF THE COURT OF CIVIL APPEALS
WEDNESDAY MARCH 22, 1967

Floyd Huggins, Appellant,

No. 14573, vs.

Lang Kinsey, Appellee.

Appealed from the second 38th District Court of Kimble County.

This cause came on to be heard on the transcript of the record, and the same being examined, it is the opinion of the Court that there was error in the judgment of the Court below. It is therefore considered, adjudged and ordered that the default judgment against Appellant is reversed and

set aside, and the cause remanded to the trial Court for a new trial, in accordance with the opinion of the Court.

It is further ordered that Appellee, Lang Kinsey, pay all costs of this Court in this behalf expended and incurred, and this decision be certified below for observance.

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**Order of the Court on Motion for Rehearing**

WEDNESDAY, APRIL 19, 1967

Floyd Huggins, Appellant,

No. 14573, vs.

Lang Kinsey, Appellee.

Appealed from Bexar County.

The motion of Appellee for Rehearing, filed April 6, 1967, coming on to be heard, it is ordered that said motion be, and it is hereby, overruled.

STATE OF TEXAS (
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COUNTY OF BEXAR (

I, Robert L. Cook, Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas do hereby certify that the foregoing is a true and correct copy of Judgment of the Court of Civil Appeals, dated Wednesday March 22, 1967, See Volume No. 17, Page No. 211 and Order of the Court on Motion for Rehearing, dated Wednesday April 19, 1967, See Volume No. 17, Page No. 217 in Cause No. 14573, wherein Floyd Huggins, is Appellant, and Lang Kinsey, is Appellee, as the same appears of record in my office.

WITNESS, Robert L. Cook, Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas.

GIVEN under my hand and seal of said Court, at office in the City of San Antonio, Texas, this 18th day of December, 1967.

(Seal) /s/ Robert L. Cook
Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas

STATE OF TEXAS (
)
COUNTY OF BEXAR (

I, Charles W. Barrow, Chief Justice of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas, do hereby certify that Robert L. Cook, whose name is subscribed to the foregoing certificate of attestation, now is and was, at the time of signing and sealing the same, Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas, and keeper of the Records and seal thereof, duly appointed and qualified to office; that full faith and credit are and of right ought to be given to all his official acts as such in all Courts of Record and elsewhere; and that his said attestation is in due form of law, and by the proper officer.

GIVEN under my hand and seal this 18th day of December, 1967.

/s/ Charles W. Barrow
Chief Justice of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting at San Antonio, Texas

STATE OF TEXAS (
)
COUNTY OF BEXAR (

I, Robert L. Cook, Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas, do hereby certify that Charles W. Barrow, whose genuine signature is appended to the foregoing certificate, was, at the time of signing the same, Chief Justice of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, duly elected and qualified, that full faith and credit are and of right ought to be given to all his official acts as such, in all Courts of Record and elsewhere.

WITNESS, Robert L. Cook, Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas.

GIVEN under my hand and seal of said Court, at office in the City of San Antonio, this 18th day of December, 1967.

(Seal) /s/ Robert L. Cook
Clerk of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, Sitting in San Antonio, Texas

## EXHIBIT III, APPENDIX

### Judgments of the Supreme Court of Texas

(On Application, and on Rehearing) (Tr. I)

IN THE SUPREME COURT OF TEXAS

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July 26, 1967

No. B-285.

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| Lang Kinsey | ) | | |
| | ) | From Kimble | County, |
| vs. | ) | | |
| | ) | Fourth | District. |
| Floyd Huggins | ) | | |

Application of petitioner for writ of error to the Court of Civil Appeals for the Fourth Supreme Judicial District having been duly considered, it is ordered that the application be, and hereby is, refused.

It is further ordered that applicant, Lang Kinsey, pay all costs incurred on this application.

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October 4, 1967

No. B-285.

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| Lang Kinsey | ) | | |
| | ) | From Kimble | County, |
| vs. | ) | | |
| | ) | Fourth | District. |
| Floyd Huggins | ) | | |

Petitioner's motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

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I, GARSON R. JACKSON, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand and the seal of the Supreme Court of Texas, at the City of Austin, this, the 13th day of December, 1967.

(Seal)

Garson R. Jackson
Clerk
By /s/ Eugene Cervenka, Deputy.
Eugene Cervenka

## EXHIBIT IV, APPENDIX

**Assignments of Error, Appellee's (Petitioner's) Motion for Rehearing in the Court of Civil Appeals**

(Tr. G-3 through G-6)

No. 14573

IN THE COURT OF CIVIL APPEALS

FOR THE

FOURTH SUPREME JUDICIAL DISTRICT OF TEXAS

AT SAN ANTONIO

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FLOYD HUGGINS,
Appellant

vs.

LANG KINSEY, ET AL
Appellees

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APPELLEE'S MOTION FOR REHEARING

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TO THE HONORABLE COURT OF CIVIL APPEALS:

COMES NOW LANG KINSEY, one of the Appellees herein, and respectfully moves the Honorable Court to set aside and vacate its judgment and opinion of March 22, 1967, by which judgment and opinion the Court reversed the judgment of the trial court herein and remanded the case for retrial, to grant Appellee a rehearing, and upon rehearing to affirm the judgment of the trial court in all things. In support whereof Appellee would respectfully show:

## ASSIGNMENTS OF ERROR

I

The Court of Civil Appeals erred in holding that service of process outside of Texas on Defendant Floyd Huggins, a non-resident, under Rule 108, Texas Rules of Civil Procedure, did not authorize the rendition of a personal judgment against him on account of his tortious operation of an automobile on the highways of the State of Texas which caused personal injuries to Plaintiff, a Texas resident.

II

The Court of Civil Appeals erred in holding that, under the United States Constitution, the procedure set out by Rule 108, Texas Rules of Civil Procedure, cannot be used to obtain jurisdiction over a non-resident of Texas by serving him outside the State of Texas in an action arising out of his tortious operation of an automobile upon the highways of the State of Texas whereby plaintiff, a Texas resident, was personally injured.

III

The Court of Civil Appeals erred in holding, as it impliedly did hold, that Rule 108, Texas Rules of Civil Procedure, could not be given a literal interpretation and application in this case since to do so would authorize a procedure contrary to provisions of the United States Constitution.

IV

The Court of Civil Appeals erred in sustaining Appellant's Point of Error One, which was: "The trial court erred in rendering judgment against appellant because no valid process was ever issued or served upon appellant."

V

The Court of Civil Appeals erred in sustaining Appellant's Point of Error Two, which was: "The trial court erred in rendering judgment against appellant because the court did not acquire jurisdiction over the person of appellant by reason of the 'Non-Resident Notice' served upon appellant."

VI

The Court of Civil Appeals erred in sustaining Appellant's Point of Error Three, which read: "The trial court erred in rendering judgment against appellant because the court had no jurisdiction over the person of appellant and therefore no power to render any judgment against appellant."

WHEREFORE, Premises considered, Appellee LANG KINSEY Prays the Court that it set aside and vacate its opinion and judgment of March 22, 1967, that it grant a rehearing herein, and that upon rehearing the judgment below be affirmed in all things.

Respectfully submitted,

Schulz & Hanna
P. O. Box 889
Abilene, Texas

Yates & Yates
310 First National-Ely Bldg.
Abilene, Texas
Attorneys for Appellee,
Lang Kinsey

By /s/ Jack M. Yates

## EXHIBIT V, APPENDIX

**Points of Error, Petitioner's Application for Writ of Error in the Supreme Court of Texas**

(Tr. H-4 through H-6)

POINTS OF ERROR

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POINT OF ERROR No. I

The Court of Civil Appeals erred in holding that the trial court did not acquire personal jurisdiction over Respondent, a non-resident of Texas, by virtue of the non-resident notice served upon him outside of Texas under Rule 108, Texas Rules of Civil Procedure, in a suit arising out of his tortious operation of an automobile on the highways of the State of Texas resulting in personal injury to Petitioner, a Texas resident. (Germane to Assignments of Error I and V, Motion for Rehearing, Court of Civil Appeals)

POINT OF ERROR No. II

The Court of Civil Appeals erred in holding that the United States Constitution, and in particular the Fourteenth Amendment thereof, prevented the Texas State Court from obtaining jurisdiction over the Respondent, a non-resident of Texas, by service of process on him outside of Texas under Rule 108, Texas Rules of Civil Procedure, for purposes of a personal judgment, in a suit based upon Respondent's tortious operation of a motor vehicle on the highways of the State of Texas proximately causing personal injury to Petitioner, a Texas resident. (Germane to Assignments of Error II and III, Motion for Rehearing, Court of Civil Appeals)

## POINT OF ERROR No. III

The Court of Civil Appeals erred in holding that Rule 108, Texas Rules of Civil Procedure, could not be given a literal interpretation and application in this case since to do so would authorize a procedure contrary to the United States Constitution. (Germane to Assignment III, Motion for Rehearing, Court of Civil Appeals)

## POINT OF ERROR No. IV

The Court of Civil Appeals erred in holding that Rule 108, Texas Rules of Civil Procedure, did not authorize service of process on a non-resident of Texas outside of the State of Texas where a personal judgment was sought against him in a cause of action arising in Texas out of his tortious operation of a motor vehicle on the highways of the State of Texas which proximately caused personal injuries to Petitioner, a Texas resident. (Germane to Assignments of Error I, IV, V & VI, Motion for Rehearing, Court of Civil Appeals)

## EXHIBIT VI, APPENDIX

**Points of Error, Motion for Rehearing of Petitioner in the Supreme Court of Texas**

(Tr. J-1 through J-3)

No. B-285

IN THE

SUPREME COURT OF THE STATE OF TEXAS

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LANG KINSEY,
Petitioner

vs.

FLOYD HUGGINS, ET AL.,
Respondents

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PETITIONER'S MOTION FOR REHEARING

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To the Supreme Court of Texas:

LANG KINSEY, Petitioner herein, respectfully makes this his Motion for Rehearing herein, and as grounds and argument therefor would respectfully show:

The Honorable Supreme Court of Texas erred in not granting the application for writ of error on Point of Error No. 1, which reads:

"The Court of Civil Appeals erred in holding that the trial court did not acquire personal jurisdiction over Respondent, a non-resident of Texas, by virtue of the non-resident notice served upon him outside of Texas under Rule 108, Texas Rules of Civil Procedure, in a suit arising out of his tortious operation of an automobile on the highways of

the State of Texas resulting in personal injury to Petitioner, a Texas resident."

The Honorable Supreme Court of Texas erred in not granting the application for writ of error on Point of Error No. II, which reads:

"The Court of Civil Appeals erred in holding that the United States Constitution, and in particular the Fourteenth Amendment thereof, prevented the Texas State Court from obtaining jurisdiction over the Respondent, a non-resident of Texas, by service of process on him outside of Texas under Rule 108, Texas Rules of Civil Procedure, for purposes of a personal judgment, in a suit based upon Respondent's tortious operation of a motor vehicle on the highways of the State of Texas proximately causing personal injury to Petitioner, a Texas resident."

The Honorable Supreme Court of Texas erred in not granting the application for writ of error on Point of Error No. III, which reads:

"The Court of Civil Appeals erred in holding that Rule 108, Texas Rules of Civil Procedure, could not be given a literal interpretation and application in this case since to do so would authorize a procedure contrary to the United States Constitution."

The Honorable Supreme Court of Texas erred in not granting the application for writ of error on Point of Error No. IV, which reads:

"The Court of Civil Appeals erred in holding that Rule 108, Texas Rules of Civil Procedure, did not authorize service of process on a non-resident of Texas outside of the State of Texas where a personal judgment was sought against him in a cause of action arising in Texas out of his tortious operation of a motor vehicle on the highways of the State of Texas which proximately caused personal injuries to Petitioner, a Texas resident."